IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/07/2004

CORAM

THE HONOURABLE MR. JUSTICE A.K. RAJAN

W.P.No. 15601 of 1997

M/s. Shaw Walace Co. Ltd.,
rep by Asst. Manager (Legal)
154, Thambu Chetty Street
Chennai 1. .. Petitioner

-Vs-

1. Deputy Commissioner of Customs
Manifest Clearance Department
Customs House, Chennai 1.

2. The Commissioner of Customs (Appeals)
Customs House, Chennai 1.

3. The JointSecretary,
Govt. of India,
Ministry of Finance
(Dept. Of Revenue) III Floor
Jeevan Deep, Sansad Marg
Parliament Street
New Delhi 110 001.

4. Union of India
rep by the Secretary
Ministry of Finance
North Block
New Delhi 110 001.

5. M/s. Marine Container Services (South)
Pvt. Ltd., 18, Swami Sivananda Salai
Chennai 5. .. Respondents

!For Petitioner .. Mr. K.Bijai Sundar

^For R1 to R4 .. Mr. M.Arunan, ACGSC
For R5 .. Mr. T.K.Ramkumar

Writ petition filed under Article 226 of the Constitution of

India praying for issuance of a Writ of Certiorari as stated therein.

:O R D E R

The prayer in the writ petition is to issue a Writ of Certiorari to call for the records relating to the impugned Order No.401/97, dated 22.4.1997 passed by the third respondent (confirming the Order No.C49/12/96, dated 11.10.1996 passed by the second respondent and Order No.28/96 dated 10.5.96 passed by the first respondent) and quash the same.

2. The petitioner/company is carrying on business as steamer agents for several foreign and Indian ship owners. In the early 1980s, carriage by containers came into existence. Container, normally, is entrusted at the Port of shipment to the vessel to be discharged at the Port of discharge. In course of time, this practice underwent a change. The containers were entrusted to a carrier known as "Main Line Operator" who would carry the same from the port of shipment to intermediary ports from where that would be carried by another vessel known as "Feeder Line Operator" to the final port of discharge. The " Main Line Operator" who carries the containers intended for different destinations bring the cargo to the feeder point like Singapore or Columbo from where the "Feeder Line Operator" carries the containers to different ports of discharge. Only the container number and the port call location are communicated to the "Feeder Line Operator"; the nature of cargo imported or the name of the consignee is not disclosed to it. Such a manifest given by the "Main Line Operator" is accepted by the Customs Department. Section 30 of the Customs Act (hereinafter referred to as 'the Act) contemplates filing of Import Manifest (cargo declaration). Section 116 of the Act contemplates levy of penalty on the carrier for non-account of manifested cargo (short landed cargo). The petitioner acted as Agents for a "Feeder Line Operator" (Pacific International Pvt. Ltd., Singapore) in respect of the vessl m.v. Kota Jade Voy 2, which was a feeder vessel operating between Madras/Singapore. Yang Ming Marine Container Lines are the "Main Line Operator" and the fifth respondent is its local steamer agent. An agreement was entered into between the "Main Line Operator" and the " Feeder Line Operator" at Singapore. Two containers, namely, YMLU 22583 01 and YMLU 2358342, carried by the "Main Line Operator" from Korea to Madras, were entrusted to the "Feeder Line Operator" at Singapore. They were loaded in the vessel Kota Jade Voy 2, which arrived at Madras Port on 23.2.1994. Before the arrival of the vessel, the fifth respondent filed the manifest for these two containers to the Customs Department and it was registered by the Madras Port Trust. When the containers were to be discharged by the petitioner, the fifth respondent advised the petitioner to re-ship the containers back to Singapore. The petitioner immediately requested the fifth respondent to obtain necessary permission from the Customs Department and comply with the requisite formalities since the containers were entered on the petitioner's account. Since the manifest had been signed by the fifth respondent, any amendment ought to have been carried on by them with the Customs Department. While so, the Assistant Commissioner of Customs issued a show cause notice, dated 1.12.1994 u/s.116 of the Act for imposition of penalty in respect of the two containers which were not discharged at Madras Port. To the said notice, a reply, dt.12.12.1994 was sent by the petitioner. The first respondent passed

an Order dated 10.5.1996 and imposed a penalty of Rs.33,64,762/- on the petitioner on the ground that the "Feeder Line Operator" alone is liable for non-discharge and not the "Main Line Operator". Against that, the petitioner preferred an appeal to the second respondent. By an order dated 11.10.1996, the appeal was allowed and the matter was remanded to the lower authority for reconsideration. However, the second respondent has held that the "Feeder Line Operator" alone is liable to pay the penalty. Therefore, the petitioner filed a revision application before the third respondent. The third respondent by an Order 22.4.1997 dismissed the revision application and held that "Feeder Line Operator" is liable as per the provisions of the Customs Act. The present writ petition has been filed challenging the order of the third respondent, dated 22.4.1997.

3. A counter has been filed by the Customs Department in which it is stated that the petitioner, Agents of the feeder service vessel, has accepted that the two containers were discharged at Singapore to be carried and delivered at Madras Port by a feeder vessel. As per Section 30 of the Act, feeder vessel operator has to file the manifest/documents. As per Section 116 of the Act, the penalty is payable by the "Feeder Line Operator" (not by the "Main Line Operator") since neither the petitioner nor the Main Line Operator had obtained necessary permission from the Customs Authorities for not landing the containers at the Port of Madras, that is they did not obtain permission for reshipment to Singapore. Under Section 30 of the Act, it is the responsibility of the petitioner to file necessary documents before taking the containers to Singapore. Under Section 116 of the Customs Act, if any goods loaded in a container for importation into India are not unloaded at the place of destination, and if the failure to unload is not satisfactorily accounted for, the person-in-charge of the containers is liable to pay the penalty.

4. The learned counsel for the petitioner submitted that since the owner of the feeder line operator requested the petitioner to reship the two containers, they were reshipped. Since the manifests were filed only in the name of the "Main Line Operator", only they are liable to pay the penalty and not the petitioner herein who is only an agent of a "Feeder Line Operator". Therefore, the order which absolved the liability of the "Main Line Operator" and fastened the liability on the petitioner is not legally sustainable and hence the Order has to be set aside.

5. The learned counsel for the Customs Department submitted that as per Section 30 of the Customs Act the petitioner is liable to pay the penalty.

6. Section 30 of the Customs Act is as follows:

"Delivery of import manifest or import report
[(1) The person in charge of a vessel or an aircraft carrying imported goods shall, deliver to the proper officer, an import manifest, and in the case of a vehicle, an import report, within twenty four hours after arrival

thereof at a customs station in the case of a vessel and twelve hours after arrival in the case of an aircraft or a vehicle, in the prescribed form:

PROVIDED that, -
(a) in the case of a vessel or an aircraft, any such manifest may be delivered to the proper officer before the arrival of the vessel or aircraft;
(b) if the proper officer is satisfied that there was sufficient cause for not delivering the import manifest or import report or any part thereof within the time specified in this sub-section, he may accept it at any time thereafter.
(2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.
(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."

As per the above provision, the person in charge of a vessel carrying imported goods shall deliver to the proper officer, an import manifest. The obligation is only on the person in charge of the vessel, which is carrying imported goods to deliver the import manifest to the Customs Authority (Proper Officer). Admittedly, the petitioner is the agent of the vessel which carried the two containers containing imported goods, into the Port of Chennai. Therefore, the petitioner was the person-in-charge of that vessel. Hence, for the violation of the provisions of the Customs Act penalty is to be levied on the petitioner, as per Section 116 of the Customs Act which is as follows:
"Penalty for not accounting for goods
If any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs], the person-in-charge of the conveyance shall be liable, -
(a) in the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act, to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;
(b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported."

According to Section 116 of the Act, if any goods loaded in a container for importation into India are not unloaded at the place of destination in India or if the quantity unloaded is short of the quantity to be unloaded, and if the failure is not satisfactorily accounted for, penalty is leviable.
Admittedly, the import manifest was filed before the Customs Department. But

the containers were not unloaded in India and the reason for not unloading has not been satisfactorily accounted for. Therefore, there is a violation of the provisions of Sec.116 of the Customs Act. Under Section 30, the person in charge of the vessel, which carries the imported good s into India, is liable to pay the penalty. Admittedly, it is the petitioner, as an agent of the "Feeder Line Operator", filed the documents to the Customs Authorities, but those documents were in the name of the "Main Line Operator". Under those circumstances, the petitioner is an agent, not only of the "Feeder Line Operator" but it is an agent also of the " Main Line Operator". If, for any reason, the petitioner is of the view that the "Main Line Operator" would be liable to pay the penalty, it is always open to the petitioner to take appropriate legal proceedings for compensation against the "Main Line Operator". The Principal is bound to compensate the agent under the law of agency.

7. In the impugned order, the Authorities have rightly arrived at the conclusion that u/s.30 it is only the person in-charge of the vessel carrying imported goods shall deliver the import manifest to the proper Officer. Therefore, the responsibility is only on the personin-charge of the vessel, who brought those containers to India. Since the petitioner is an agent of that ship which brought the goods into India and it filed the manifest before the Customs Officer, it is the petitioner who is responsible to pay the penalty to the Customs Department. Therefore, there is nothing wrong in the impugned order, and it cannot be set aside.

8. As stated above, if the petitioner is of the opinion that it is the "Main Line Operator" who shall be liable for penalty since in whose name the manifest was filed, it is always open to him to proceed against "Main Line Operator" for damages.

9. With the above observation, the writ petition is dismissed. No costs.

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To

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